HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Petition No.1279 of 2007

Between:

T. Sarala …Petitioner

And

Commissioner and Director of School Education, Andhra Pradesh, Hyderabad and two others.

…Respondents

:: O R D E R ::

Counsel for the petitioner : Sri G.L. Narasimha Rao for Sri J. Chandraiah.

Counsel for the respondents : Government Pleader for Services-I.

27th April, 2007

Per G.S. Singhvi, C.J.

This petition is directed against order dated 3-1-2007 vide which the Andhra Pradesh Administrative Tribunal (for short, 'the Tribunal') dismissed O.A.No.7483 of 2005 filed by the petitioner for issue of a direction to the respondents to consider her case for posting in Primary School, Annadurai Nagar, Suryapet Town or M.A.M. School, Suryapet Town.

The petitioner joined service as Secondary Grade Teacher in Upper Primary School, Ilapuram, Chevumula Mandal, Nalgonda District on 4.11.1996. She attended the counseling held on 3.11.2005 by District Educational Officer, Nalgonda (resodnent No.2) and opted for Primary School, Jathyathanada, Thungathurthy Mandal, Nalgonda District. RespodnentNo.2 accepted her option and issued order dated 5.11.2005 whereby the petitioner was posted in the school of her choice. After ten days, she filed an appeal for consideration of her case for posting in Primary School, Annadurai Nagar or MAM School, Suryapet Town by contending that the vacancies in these schools were not notified at the time of counseling. However, without waiting for the decision of the appeal, she filed an application under Section 19 of the Administrative Tribunals Act, 1985 (for short, 'the Act') and made prayer to which reference has been made in the opening paragraph of this order. She pleaded that on account of non-display of vacancies in Primary School, Annadurai Nagar and M.A.M. School, Suryapet Town, she could not exercise option for those schools and, as a result of that, she has been deprived of opportunity to seek transfer in either of those schools.

In the counter-affidavit filed by him, Shri P.Laxma Reddy, the then District Educational Officer, Nalgonda averred that the petitioner participated in the transfer counseling on 2.11.2005 and not on 3.11.2005 and opted for Primary School, Jathyathanda, Thungathurthy Mandal, Nalgonda Districtr. He further averred that there was no vacancy of Secondary Grade Teacher in Primary School, Annadurai Nagar or M.A.M.School, Suryapet Town and, therefore, the question of displaying the same before the counselling did not arise.

Smt. D. Jayamma, who got herself impleaded as party to the application, filed affidavit stating therein that as a sequel to the

counseling held as per the policy of rationalization, she was transferred and posted to Upper Primary School, Ilapuram, Chevamula Mandal. She further averred that after having participated in the counseling and opted for Primary School, Jathyathanda, Thungathurthy Mandal, the petitioner is not entitled to complain her posting in that school. Smt. D. Jayamma further averred that the petitioner cannot continue in Upper Primary School, Ilapuram because she has completed more than eight years stay in that school.

The Tribunal dismissed the application by observing that after having opted for Primary School, Jathyathanda, the petitioner cannot seek change of the place of posting.

We have heard learned counsel for the petitioner and learned Government Pleader for Services-I.

Transfer of an employee from one place to the other within the same cadre has always been recognised as an incidence of service and it has been consistently held that the Court should be extremely loath to interfere with the discretion exercised by the employer in the matter of transfer and posting of the employees. Judicial review of such an action is permissible unless when it is shown that the transfer is violative of the statutory provisions, if any applicable or is vitiated due to mala fides or personal bias. Reference in this connection can appropriately be made to the judgments of the Supreme Court in **Gujarat Electricity Board v. Atmaram**[1], **Union of India v. S.L. Abbas**[2], **National Hydro Electric Power Corpn. Ltd. V. Shri Bhagwan**[3], **Public Services Tribunal Bar Association v. State of U.P.**[4], **Union of India v. Janardhan**[5] and **Kendriya Vidyalaya Sangathan v. Damodar Prasad Pandey**[6].

In **Gujarat Electricity Board v. Atmaram** (supra), the Supreme Court, while commenting on the employer's prerogative to transfer an employee and the limited scope of judicial review in such maters, observed:

> " Transfer of a government servant appointed to a particular cadre of transferable posts from one place to the other is an incidence of service. It is necessary in public interest and efficiency in public administration. No government servant or employee of Public Undertaking has legal right for being posted at any particular place. Whenever, a public servant is transferred he must comply with the order but if there be any genuine difficulty in proceeding on transfer it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled the concerned public servant must carry out the order of transfer. He has no justification to avoid or evade the transfer order merely on the ground of having made a representation, or on the ground of his difficulty in moving from one place to the other. If he fails to proceed on transfer in compliance with the transfer order, he would expose himself to disciplinary action under the relevant rules, as has happened in the instant case."

By applying the ratio of the above-noted judgments to the facts of the case, we hold that the Tribunal did not commit any error by refusing to entertain the petitioner's prayer for issue of a mandamus to respondent No.2 to consider her case for posting in Primary School, Annadurai Nagar, Suryapet Town or M.A.M. School, Suryapet Town.

The Andhra Pradesh Teachers (Regulation of Transfers) Rules, 2005 (for short, 'the Rules') on which reliance has been placed by the learned counsel for the petitioner do not, in any manner, help his client's cause because she has failed to show violation of Rules 9, 10

and 11 of the Rules, which provide for notification of vacancies, regulate the process of counseling and selection of vacancies by the teachers. The petitioner has not produced any evidence before the Court to show that vacancies in Primary School, Annadurai Nagar and MAM School, Suryapet Town were available before the commencement of counseling. In the counter-affidavit filed by him, respondent No.2 categorically averred that no vacancy was available in those schools before the commencement of counseling. Therefore, it is not possible to entertain the petitioner's prayer for issue of a mandamus to respondent No.2 to allow her to opt either of the two schools in Suryapet Town.

In the result, the writ petition is dismissed.

As a sequel to dismissal of the writ petition, WPMP.No.1620 of 2007 filed by the petitioner for interim relief is dismissed and WVMP.No.1044 of 2007 filed by respondent No.3 for vacating the interim order is disposed of as infructuous and the interim order is vacated.

G.S. SINGHVI, C.J.

27th April, 2007

C.V. NAGARJUNA REDDY, J.

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[1] (1989) 2 SCC 602

[2] (1993) 4 SCC 357

[3] (2001) 8 SCC 574

[4] (2003) 4 SCC 104

[5] (2004) 4 SCC 245

[6] (2004) 12 SCC 299